MASTER AND SERVANT—EIGHT HOUR LAW.—On a petition for a writ of habeas corpus, it appeared that two criminal complaints had been filed, charging the petitioner Albee, as mayor of Portland, with violating the provisions of the Labor Laws of Oregon, in that he permitted and required a designated fireman and a specified policeman to labor in their departments more than eight hours in one day, when there was no emergency demanding the performance of such extra service. *Held;* a policeman or fireman, required by municipal law to take an oath of office, and not subject to removal at the pleasure of the appointing power, but only in accordance with the civil service rules, is an officer, and not a "laborer" within the eight hour law for laborers employed by the state or its auxiliaries. (Laws 1913 c. 61.). *Albee* v. *Weinberger, Constable,* (Ore. 1914) 138 Pac. 859.

The court evidently arrived at its conclusion from the facts that the fireman and policeman were required to take an oath of office and were not subject to discharge except by virtue of the civil service rules. The language of the court in *Collins* v. *Mayor etc.,* 3 Hun. 680, was quoted: "probably the true test to distinguish officers from simple servants or employees is in the obligation to take the oath prescribed by law." In *State* v. *Martindale,* 47 Kans. 147, it was held that Sess. Laws, 1891, c. 114, making it unlawful for laborers, workmen, mechanics or other persons employed by the state of Kansas to work more than eight hours a day, did not include an officer or employee for whom an annual salary had been specifically named and appropriated by the legislature. In *Robinson* v. *Aiken,* 39 N. H. 211, it was decided that "labor" as used in the Rev. St. c. 208, Sect. 9, which provides that no person summoned as trustee shall be charged as such on account of any labor performed by the debtor after service of the process, etc., includes the official services of the mayor of the city, and hence the city could not be charged as trustee on account of such services. The rules applied in these two cases would seem to be much fairer and more nearly within the spirit of such legislation than the test in the principal case. In determining whether a particular employee is really a laborer, the character of the work he does must be taken into consideration, and he should be classified, not according to the arbitrary designation given to his calling, but with reference to the character of his services. *Oliver* v. *Macon Hardware Co.,* 98 Ga. 249. *McPherson* v. *Stromp,* 100 Ga. 228.

NEGLIGENCE—BAILEE'S CONTRIBUTORY NEGLIGENCE NOT IMPUTABLE TO BAILOR.—Plaintiff loaned his horse to X, without compensation and merely for the accommodation of X. The horse was killed by defendant railroad through the contibutory negligence of X who was riding the horse at the time. *Held* that the contributory negligence of X could not be imputed to plaintiff, and that defendant was liable. *Spellman* v. *Delano,* (Mo. App. 1914) 163 S. W. 300.

The authorities on this precise point are few and almost evenly divided. Those which hold contrary to the principal case proceed on the theory that the bailee is, in a sense, the agent of the bailor, and consequently the

bailee's contributory negligence can be imputed to the bailor in an action by the latter against a third party for the destruction of the goods. *Texas & P. R. R. Co.* v. *Tankersley,* 63 Tex. 57; *Illinois Central R. Co.* v. *Sims,* 77 Miss. 325, 27 So. 527, 49 L. R. A. 322; *Welty* v. *Indianapolis & V. R. Co.,* 105 Ind. 55, 4 N. E. 410; *Forks Township* v. *King,* 84 Pa. 230. If it is correct to say that there is anything of agency in the contract of gratuitous bailment, the principal case would seem to be incorrectly decided, but it is not so easy to see just what constitutes this necessary element of agency. It seems far-fetched to say that the bailee is the agent of the bailor to hold the goods, and that as such an agent his negligence may be imputed to his principal. If, then, we conclude that there is no relation of principal and agent between bailor and bailee in a case of this kind we are led to the further conclusion that the principal case is correctly reasoned. Authorities are few, and it is not possible definitely to state whether the weight is with or against the principal case. The following cases are in accord: *Sea Ins. Co.* v. *Vicksburg S. & P. R. Co.,* 159 Fed. 676, 17 L. R. A. (N. S.) 925; *New York L. & W. R. Co.* v. *New Jersey Electric R. Co.* 60 N. J. L. 338, 43 L. R. A. 849, 38 Atl. 828; *Currie* v. *Consol. R. Co.,* 81 Conn. 383, 71 Atl. 356.

NEGLIGENCE—LIABILITY FOR SUPPLYING TAINTED MEAT FOR FOOD.—A, one of the defendants, lived with his father and mother, the other defendants, on the father's farm and carried on the farming operations. He employed plaintiff to work for him, and arranged with his father and mother to board plaintiff. The father purchased, and the mother cooked and served some tainted meat of which the plaintiff partook, and which caused him to become ill. *Held,* that each of the defendants was equally liable, notwithstanding the fact that plaintiff had contracted with A alone. *Malone* v. *Jones,* (Kans. 1914), 139 Pac. 387.

The liability is unquestioned where the defendant has contracted to furnish the plaintiff with food, or where he holds himself out to the public as a dealer in foodstuffs. *Peckham* v. *Holman,* 28 Mass. 484; *Bishop* v. *Weber,* 139 Mass. 411, 1 N. E. 154, 52 Am. Rep. 715; *Craft* v. *Parker, Webb & Co.,* 96 Mich. 245. 55 N. W. 812, 21 L. R. A. 139; *Hunter* v. *State,* 38 Tenn. 160, 73 Am. Dec. 164. It is also held that a manufacturer is liable for injuries caused by tainted meat put up by him, even in the absence of scienter. *Watson* v. *Augusta Brewing Co.,* 124 Ga. 121, 52 S. E. 152, 1 L. R. A. (N. S.) 1178, 110 Am. St. Rep. 157; *Salmon* v. *Libby, McNeil & Libby,* 219 Ill. 421, 76 N. E. 573; *Tomlinson* v. *Armour & Co.,* 75 N. J. L. 748, 70 Atl. 314, 19 L. R. A. (N. S.) 923. The opinion in the principal case reviews the *Armour* case, and decides that the principle there announced governs here, and that the person or persons, whether manufacturers or not, who furnish food to another, have the duty of exercising care that the food is in fact fit to be eaten and liable for failure to do so. The liability is based on the wrong, and reaches to any person who it might be reasonably foreseen would be injuriously affected by it.